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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1940

No. 577

ARTHUR W. MITCHELL,

Appellant,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, FRANK O. LOWDEN, ET AL.,

Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

REPLY BRIEF FOR ARTHUR W. MITCHELL, APPELLANT.

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March 10, 1941.

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I.

Reasons for filing reply brief.

We have carefully considered the joint brief filed by the appellees, Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees of the Estate of the Chicago, Rock Island and Pacific Railway Company, Illinois Central Railroad Company and the Pullman Company, and the carbon copy of the brief received by the appellant March 7 and 10, 1941, for the appellee, Interstate Commerce Commis-

sion and find that both briefs raise a host of minor controversies over mere details but we have been unable to find ~~in either~~, answers to the propositions of law tendered by the brief for appellant. These details we shall not attempt to meet, lest a particularized rebuttal by the appellant, obscure the essential simplicity of the issues presented to this court for decision. We expressly desire to note that we do not concede that appellees are correct on the issues which are not developed in reply. Instead, we shall briefly call to the attention of this Honorable Court two matters which we believe sufficient to close the pleadings.

II.

The United States concedes correctness of two major contentions urged by the appellant for reversal.

The Solicitor General, representing the appellee, United States, concedes the following two major contentions urged by the appellant for reversal of the decree of the district court to-wit:

1. That the Arkansas Separate Coach Law does not apply to an interstate passenger.
2. That the volume of traffic does not justify discrimination against American citizens traveling in interstate commerce as first-class passengers, because of their race.

Reference is hereby made to the Memorandum for the United States filed by the Solicitor General, in support of the above contentions urged by the appellant for the reversal of the decree of the district court and the appellant joins the Solicitor General in his recommendation that the decree of the district court be reversed, the Commission directed to reinstate the appellant's complaint and to proceed in the light of the opinion of this court.

III.

The charge that the appellant has shifted his position since the trial before the Commissioner's examiner is not supported by the record.

The appellees, Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees of the Estate of the Chicago, Rock Island and Pacific Railway Company, Illinois Central Railroad Company and the Pullman Company in their joint brief (p. 3, para. 3, 4; p. 4, para. 1) charge that the appellant has shifted his position concerning the question of the acceptance by the appellant of the segregation under the Arkansas Statute and other questions appearing in appellant's briefs filed in this court. It is only necessary to call to the attention of this court the allegations contained in the complaint filed before the Commission (R. 2-7); the testimony of the witnesses (R. 70-201) including the witnesses for the appellees; Defendants' Exhibit Number 2—Exceptions on behalf of plaintiff, Arthur W. Mitchell to report proposed by William S. Disque, Examiner (R. 260-264); the Argument in Support of the Exceptions (R. 264-279) and the Brief filed by the appellant in this court, all of which we submit clearly demonstrates the incorrectness of the charge against the appellant by the appellees, that the appellant has shifted his position. We believe further reference is unnecessary to meet the charge.

CONCLUSION.

For these reasons, in addition to those set out in our main brief, it is respectfully submitted that the decision of the court below should be reversed.

Respectfully submitted,

RICHARD E. WESTBROOKS,
and
ARTHUR W. MITCHELL, *Pro Se,*
Attorneys for Appellant.

March 10, 1941.

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